

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

James P. Hart

v.

Civil No. 05-cv-148-JD

Performance Marketing, Inc.

PROCEDURAL ORDER

Performance Marketing, Inc., removed this case from state court, asserting federal question jurisdiction under 28 U.S.C. § 1331. The magistrate judge denied James P. Hart's motion to remand, relying on the grounds stated by Performance. Hart objected to that decision.

On review, the court concluded that subject matter jurisdiction did not exist under § 1331 but that the declaration included in the state court writ indicated that jurisdiction based on diversity of citizenship might exist under 28 U.S.C. § 1332, although Hart asserted that the amount in controversy requirement was not met. The court directed Performance to file a memorandum in support of jurisdiction. In response, Performance has filed a notice that it withdraws its objection to Hart's motion to remand.

Based on the present record, this court lacks subject matter jurisdiction over the case. Therefore, the case must be remanded to state court. 28 U.S.C. § 1447(c).

Conclusion

For the foregoing reasons, the clerk of court shall remand the action to Grafton County Superior Court and close the case in this court.

SO ORDERED.

  
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Joseph A. DiClerico, Jr.  
United States District Judge

June 16, 2005

cc: K. William Clauson, Esquire  
Debra Weiss Ford, Esquire